

1 A. How many different types of applications?

2 Q. Yes, sir.

3 A. I couldn't even comprehend.

4 Q. Can you give us an estimate?

5 A. I couldn't even give you an estimate.

6 Q. Can you give us a range? Are we talking  
7 hundreds?

8 A. Several tens of thousands I would think.

9 Q. And are certain applications -- well,  
10 strike that.

11 When you researched the sales files of  
12 Heim from approximately 1970 to 1980 you mention  
13 that you reviewed serial numbers 260 to  
14 approximately 2600?

15 A. Correct.

16 Q. Did you find any sales files that  
17 evidenced Heim supplying a light curtain, a barrier  
18 or a pull back mechanism to any particular end user  
19 with the sale of a press brake?

20 A. No.

21 Q. In the industry does the use of a  
22 particular press brake change over time?

23 A. I don't understand the question.

24 Q. Do employers typically use press brakes

1 for a particular application and then subsequently  
2 have a new application that is necessary and so  
3 forth and so forth and continuously change the  
4 application for the press brakes?

5 A. I wouldn't be surprised if there was  
6 numerous applications for each particular press  
7 brake.

8 Q. I would take it it wouldn't surprise you  
9 to know that the Corey Manufacturing employees that  
10 we talked to said that there were numerous uses for  
11 the press brake that was put during its use of the  
12 press brake?

13 A. I'm not surprised.

14 Q. Do you have any way of knowing how many  
15 different uses Afco Lycomie put to this particular  
16 press brake throughout its 20 something years of  
17 ownership of this press brake?

18 A. No.

19 Q. Did Heim ever receive any type of  
20 complaint regarding the point of operation for this  
21 particular press brake during Afco Lycomie's  
22 ownership of the press brake?

23 A. Not that I'm aware of.

24 Q. Has Heim ever received a point of injury

1 from the use of the serial number 2176 press brake  
2 while in the ownership of Afco Lycomie?

3 A. Not that I'm aware of.

4 Q. In the industry, sir, who selects the  
5 appropriate point of operation safety device for  
6 any particular application?

7 A. It's the responsibility of the end user.

8 Q. Are you aware that the ANSI requirements  
9 since at least 1973 have placed that responsibility  
10 on the end user?

11 A. I'm aware of that, yes.

12 Q. And particularly the employer?

13 A. Yes.

14 Q. And are you aware that OSHA also places  
15 that responsibility upon the employer?

16 A. I'm aware of that, yes.

17 Q. Are you aware of any standard at all  
18 governing Heim or any manufacturer of press brakes  
19 that places responsibility upon the press brake  
20 manufacturer for choosing an appropriate point of  
21 operation safety device for a press brake?

22 A. Not that I'm aware of.

23 Q. Would that work if the manufacturer were  
24 required to choose an appropriate -- strike that.

1           Would it work if the manufacturer would be  
2 required to choose a point of operation safety  
3 device for the press brake?

4           A.    I don't understand your question.  Can you  
5 restate that for me?

6           Q.    Would it be practical for the manufacturer  
7 of a press brake to choose a point of operation  
8 safety device to accompany the sale of a press  
9 brake?

10          A.    I wouldn't think so because of the  
11 numerous applications they could be subjected to.

12          Q.    And if a manufacturer of a press brake did  
13 supply a particular point of operation safety  
14 device, can you envision situations where the use  
15 to which the press brake was being made would not  
16 permit the use of that particular point of  
17 operation safety device?

18          A.    I don't know.  I'd say -- unless it was a  
19 captive press that would be the only time it would  
20 be able to do that.

21          Q.    When you say a captive press, what do you  
22 mean?

23          A.    In other words, if it was just going to be  
24 one application for the lifetime of that machine

1 and never going anyplace then you could probably  
2 make that statement.

3 Q. Have ever heard of a press brake that has  
4 only been used on one application?

5 A. Not that I'm aware of.

6 Q. So can you envision if the manufacturer of  
7 a press brake supplied a particular point of  
8 operation safety device that they may be providing  
9 a particular device that didn't work for the end  
10 user?

11 A. It's possible, yes.

12 Q. And with the numerous potentially  
13 thousands of uses to which a press brake is put,  
14 would you consider that to be likely that if the  
15 manufacturer chose a particular point of operation  
16 safety device that during one of the uses or many  
17 of the uses that point of operation safety device  
18 would not be usable?

19 A. That would be correct.

20 Q. Do you know of any manufacturer that has  
21 taken the responsibility of providing point of  
22 operation safety devices at its choosing without  
23 knowing the various uses to which an end user may  
24 use a particular press brake?

1 A. I'm not aware of that.

2 Q. And how many different press manufacturers  
3 have you worked for -- press brake manufacturers,  
4 excuse me?

5 A. Press brake manufacturers would be Heim  
6 and Niagra.

7 Q. Okay. And how many different power press  
8 manufacturers have you worked for?

9 A. Clearing, Niagra, Bliss, Heim, Roselle.

10 Q. Do you know of any power press  
11 manufacturers that have chosen to choose point of  
12 operation safety devices not knowing the particular  
13 end use for which the power press will be used?

14 A. No.

15 Q. Are you aware in the press brake industry  
16 that certain uses require the operator to manually  
17 manipulate the product with his or her hands but  
18 outside of the point of operation of the particular  
19 press brake?

20 A. I would suspect on longer sheets that  
21 would have to be a requirement where you have to  
22 push the sheet into a press brake.

23 Q. And would the use of the tongs that we  
24 have referenced be suitable for a particular use

1 that you've just described where the user has to  
2 manually hold the product, again, outside of the  
3 point of operation of the press brake?

4 A. There would be requirements, yes.

5 Q. Pardon me?

6 A. There would be requirements, yes.

7 Q. Do you know whatever happened -- assuming  
8 that the tongs did not exist on the day of Tina  
9 Lindquist's injury, do you have any idea what  
10 happened to it throughout the 24 years or so that  
11 the press brake had been in existence?

12 MR. HARTMAN: Object to it because there's no  
13 ability to make that assumption. But go ahead.

14 THE WITNESS: No.

15 MR. ROBINSON: I asked him if he knew.

16 BY MR. ROBINSON:

17 Q. Has anyone ever provided you with the  
18 tongs that accompanied the sale of this particular  
19 press brake in 1978?

20 A. No.

21 Q. Has anyone ever provided to you the foot  
22 pedal that accompanied this particular press brake  
23 when sold in 1978?

24 A. No.

1 Q. Do you know if the --

2 MR. HARTMAN: If you want to take the colored  
3 ones to look at.

4 BY MR. ROBINSON:

5 Q. Do you know if the foot pedal shown in  
6 photos 1 and 2 of Exhibit 4 show the foot pedal  
7 that accompanied the sale of this press brake in  
8 1978?

9 A. I can't say that's the pedal.

10 Q. Do you know where the foot pedal is today  
11 that was being used by Tina Lindquist at the time  
12 of her injury?

13 A. No.

14 Q. Does Heim employ designers or engineers to  
15 determine the appropriate and safest point of  
16 operation safety device to be used for various  
17 applications on its press brakes?

18 A. No.

19 Q. Has Heim ever held itself out as having  
20 the expertise to choose the most appropriate and  
21 safest point of operation safety device for the  
22 uses to which its presses may be put?

23 A. No.

24 Q. Has Heim instructed its -- instructed the



1 purchasers of its press brakes that it is their  
2 responsibility to choose the appropriate safety  
3 device?

4 A. It's stated in our manuals that point of  
5 operation is the responsibility of an end user.

6 Q. And is there also a warning on the front  
7 of the machine that Heim places on its press  
8 brakes?

9 A. Yes, there's a warning that says never,  
10 it's a never, never, never warning sign.

11 Q. And does that warning also indicate that  
12 it is the employer's responsibility to implement  
13 the above never warnings that you just mentioned  
14 and also to provide proper dyes, devices or means  
15 that may be necessary or required for any  
16 particular use, operation, setup or service?

17 A. Correct.

18 Q. And is the warning that is shown in photo  
19 18 of Exhibit 4 the warning that was affixed to the  
20 front of the press brake facing the operator?

21 A. I believe that's the case. I can't see it  
22 in this actual photo, but I believe it's the same.

23 Q. Do you know how that warning is fastened  
24 to the press brake?

1           A.     It is -- in this particular case it  
2     appears to be riveted as well -- I believe this  
3     particular one is a metal plate. That's riveted to  
4     the machine.

5           Q.     Who is in the best position to determine  
6     the most appropriate and safest means of providing  
7     a point of operation safety device for the model  
8     70-6 press brake?

9           A.     The owner/operator.

10          Q.     Was Heim ever requested by anyone,  
11     including the original purchaser or any of the  
12     ultimate users, to give any type of guidance or  
13     input into the appropriate point of operation  
14     safety device to be used?

15          A.     Not that I'm aware.

16          Q.     Would it surprise you that the employees  
17     who were manufacturing, a number of the employees  
18     have acknowledged that it is the employer's  
19     responsibility to choose the appropriate point of  
20     operation safety device for this particular press  
21     brake?

22          MR. HARTMAN: I'm going to object to the form  
23     of the question as mischaracterization of what  
24     they've said. Go ahead and answer.

1 MR. ROBINSON: That's as far from the truth as  
2 I can imagine anyone saying.

3 THE WITNESS: I believe they're aware it's  
4 their responsibility.

5 BY MR. ROBINSON:

6 Q. Would it surprise you to know that the  
7 specific employees of Corey Manufacturing have  
8 indicated that they're aware that it is the  
9 employer's responsibility to provide the  
10 appropriate point of operation safety device for  
11 this particular press brake?

12 A. I'm not surprised by that statement.

13 Q. Is that consistent with what you  
14 understand to be the custom in the industry?

15 A. Yes.

16 Q. Considering the many uses to which a press  
17 brake can be made, would it be feasible for the  
18 manufacturer to select a point of operation safety  
19 device for one of its press brakes?

20 A. I don't believe it would be feasible.

21 Q. Do you know of any press brake  
22 manufacturer that has decided that it would be  
23 feasible to unilaterally select a particular point  
24 of operations safety device on a press brake that

1 it has sold?

2 A. I don't believe so.

3 Q. Are you aware of any other lawsuits  
4 involving the model 70-6 press brake manufactured  
5 by Heim?

6 A. No.

7 Q. Are you aware of any other personal  
8 injuries resulting from the use of a model 70-6  
9 press brake?

10 A. No.

11 Q. Have you sold press brakes did you say for  
12 Clearing?

13 A. Clearing didn't -- not while I was there.

14 Q. Niagara, did you sell press brakes for  
15 Niagara?

16 A. I wasn't involved with the sales  
17 department with Niagara, I was aftermarket sales.

18 MR. ROBINSON: Those are all of the questions  
19 that I have.

20 MR. HARTMAN: I just have a couple of  
21 follow-up, I promise you I'll be short.

22 FURTHER EXAMINATION

23 BY MR. HARTMAN:

24 Q. When you said that you don't know of any

1 other injuries occurring with the model 70-6 press  
2 brake, you don't know whether there were or there  
3 weren't, am I correct?

4 A. That's correct.

5 Q. Okay. You're not saying there weren't any  
6 or you're not saying there were, you just don't  
7 have that information?

8 A. I'm not aware of any, right.

9 Q. I looked through all of the invoices and  
10 shipping documents that were included in Exhibit  
11 No. 5. It appears to me that with regard to the  
12 original purchase of the press brake, it was  
13 shipped directly to the end user, am I correct?

14 A. I would have to double-check but that  
15 would normally be the case, we would get shipping  
16 instructions, yes.

17 Q. Distributor, is that kind of like the  
18 franchise like the Chevy dealer he basically sells  
19 a product that someone else makes it, is that how a  
20 distributor network is worked out?

21 MR. ROBINSON: I object to the form of the  
22 question. He's not going to answer that general  
23 question where you try to tie Heim to one of its --  
24 to a distributor to an agent dealership, franchisee

1 of a car dealership. He's not answering the  
2 question.

3 MR. HARTMAN: Fine.

4 MR. ROBINSON: Okay.

5 BY MR. HARTMAN:

6 Q. Can a distributor be an exclusive  
7 distributor of Heim products, may he sell just Heim  
8 products?

9 MR. ROBINSON: I'll object that's been asked  
10 and answered. He said he's not aware of any such  
11 situations.

12 THE WITNESS: Not exclusively.

13 BY MR. HARTMAN:

14 Q. Not exclusively?

15 A. We don't have any exclusive dealerships.

16 Q. Now, do you know of any -- in 1978 did you  
17 have exclusive dealerships?

18 A. I don't believe so.

19 Q. Do you now?

20 A. No.

21 Q. Do you know who HB Machinery is?

22 A. No.

23 Q. Do you know the distributor of this  
24 particular product?

1 A. Say that again.

2 Q. Do you know anything about the distributor  
3 of this particular press brake?

4 A. Meaning HB?

5 Q. Yes.

6 A. No.

7 Q. Are they still a distributor of Heim  
8 products?

9 A. No.

10 Q. When did it end? When did the  
11 relationship end?

12 A. I'll not aware of when it ended.

13 MR. ROBINSON: I'm going to object to your  
14 characterization of a distributor of Heim products.  
15 I don't know how that sounds. They're a  
16 distributor that actually purchased a Heim product  
17 here. I don't know if it's a big issue or not, but  
18 I can see that being read by the plaintiff in some  
19 other lights subsequent to this litigation.

20 MR. HARTMAN: You can try to mold unfavorable  
21 testimony any way you want with your  
22 communications.

23 MR. ROBINSON: If you think that testimony was  
24 unfit -- for you to even suggest that that

1 testimony was unfavorable was absurd and then for  
2 you to categorize my objection on that basis is  
3 also absurd.

4 MR. HARTMAN: You're constantly trying to mold  
5 the testimony that you don't like.

6 MR. ROBINSON: I don't understand what you're  
7 talking about there's nothing wrong with that. My  
8 point was that you said distributor of Heim  
9 products, that isn't the testimony. You added that  
10 yourself. There are distributors and in this  
11 particular case this distributor was the purchaser  
12 of a Heim product that ultimately made its way to  
13 an end user. So I don't know why you feel a need  
14 to continuously making your smart comments in the  
15 face of a valid objection or even an invalid  
16 objection if you think that's the case.

17 BY MR. HARTMAN:

18 Q. This product was never shipped to HB  
19 Machinery, was it?

20 A. I believe it was shipped to the end user.

21 Q. Correct. And the end user purchased the  
22 machine, am I correct?

23 A. Through HB.

24 Q. They paid HB, but it was shipped -- HB



1 never had possession of this machine, did they?

2 A. I don't believe so.

3 Q. Okay. And you don't know what role HB had  
4 in the selection process of this machine, do you?

5 MR. ROBINSON: I'll object to the form of that.  
6 He's already indicated what they have -- what they  
7 requested according to the sales documents. So  
8 you're now wanting to erase that testimony and  
9 suggest that he does not know what role they  
10 played, when, in fact, he testified to that.

11 BY MR. HARTMAN:

12 Q. Other than the fact that you had an order  
13 from HB to ship a machine to Afco Lycomie, do you  
14 know what communications took place between HB and  
15 Afco Lycomie?

16 MR. ROBINSON: Same objection, he's indicated  
17 what communications would have taken place by  
18 looking at the sales documents.

19 BY MR. HARTMAN:

20 Q. Go ahead, you can answer the question.

21 A. I wasn't there at the time. I'm basing my  
22 information from my review of the file.

23 Q. What documents in Exhibit No. 5 tell you  
24 the communications between HB and Afco Lycomie?

1 A. Between HB --

2 Q. And Afco Lycomie?

3 MR. ROBINSON: For the record I don't believe  
4 that was a question previously referenced. He's  
5 asking about HB Machinery and Afco Lycomie as  
6 opposed to HB and Heim.

7 MR. HARTMAN: You finally have me confused on  
8 that.

9 MR. ROBINSON: I don't know what you mean by  
10 that. Your previous questions were about  
11 communications between HB Machinery and Heim. Now  
12 you've just changed the question to be HB Machinery  
13 and Afco Lycomie.

14 BY MR. HARTMAN:

15 Q. My question is what communications took  
16 place between HB and Afco Lycomie?

17 A. I would make this document a communication  
18 that appeared to be a communication from HB as the  
19 letter to Heim Group about some equipment.

20 Q. And you're referring to the post quick  
21 reply message dated August 31st, 1979?

22 A. Correct.

23 Q. Subject, Heim Invoice --

24 A. That's HB to Heim Group about a

1 communication HB had with Afco.

2 Q. Right. And it says here that when Afco  
3 was following up on delivery, they called Heim  
4 direct, am I correct?

5 A. That's what that says, that's correct.

6 Q. So it appears that Afco communicated  
7 directly with Heim with regard to missing pieces?

8 MR. ROBINSON: Missing pieces?

9 THE WITNESS: I believe it was about a  
10 delivery.

11 BY MR. HARTMAN:

12 Q. Missing a delivery of pieces that weren't  
13 shipped?

14 MR. ROBINSON: Object to the form of the  
15 question.

16 BY MR. HARTMAN:

17 Q. Okay. The subject of this is the fact  
18 that you never shipped the manual front operated  
19 back gauge, correct?

20 A. The communication was with Afco was to  
21 Heim asking about the delivery of the press brake.  
22 And the response was we would be able to ship  
23 without the back gauge.

24 Q. Okay. So Afco contacted Heim about

1 getting the press brake shipped to them without the  
2 back gauge?

3 A. Correct. That's what that document  
4 implies.

5 Q. So this document implies that there was  
6 communication between Afco and Heim with regard to  
7 the shipping of the product they purchased?

8 A. That's correct.

9 Q. Heim manufactured it?

10 A. Correct.

11 Q. Now, HB from the documents I have never  
12 received possession of any of the pieces of this  
13 machinery, all of the pieces went directly to the  
14 end user, am I correct?

15 MR. ROBINSON: I'm going to object to the form  
16 of the question.

17 THE WITNESS: I believe that's correct.

18 BY MR. HARTMAN:

19 Q. So you don't know what initiated the  
20 selection of the Heim press, whether it was Afco  
21 calling up HB as the local distributor saying, hey,  
22 we read about these Heim presses and we want one or  
23 whether HB recommended a Heim press, am I correct?

24 MR. ROBINSON: Objection to the form or

1 something else for you to suggest two examples.

2 BY MR. HARTMAN:

3 Q. Okay. You don't know --

4 A. I don't know what communication, no.

5 Q. And you don't know whether HB was just an  
6 order taken for your product or whether or not they  
7 gave consulting services, correct?

8 A. Correct.

9 Q. Now, am I correct that Heim now provides  
10 consulting services with regard to press brakes it  
11 sells?

12 A. I'm not aware of that.

13 Q. You're not aware of that?

14 A. That we provide consulting services?

15 Q. Yeah. If someone calls up and wants to  
16 talk to you about what type of press brake they  
17 want use for its particular use, will Heim talk to  
18 that person?

19 A. We'll speak to them, yes.

20 Q. Is there ever a time that you know of that  
21 Heim would not have consulted with a prospective  
22 customer about the particular type of press brake  
23 best suits that customer's needs?

24 MR. ROBINSON: If they called up in that

1 situation and asked questions about it?

2 MR. HARTMAN: Right.

3 THE WITNESS: We would answer questions about  
4 our product, yes.

5 BY MR. HARTMAN:

6 Q. Do you know whether that call was ever  
7 made to Heim by Afco Lycomie as it relates to this  
8 particular press brake?

9 A. Obviously, I can't -- I wasn't there at  
10 the time if that's where you're going with that,  
11 no.

12 Q. So you don't know?

13 A. No, I do not.

14 Q. Am I correct that my understanding, and  
15 correct me if I'm wrong, is that even if an  
16 individual contacts Heim directly about the  
17 purchase of a press brake, they still must go  
18 through the local distributor in their area to  
19 acquire that press brake?

20 MR. ROBINSON: When, presently?

21 MR. HARTMAN: Yes.

22 THE WITNESS: Not necessarily.

23 BY MR. HARTMAN:

24 Q. No, that's not the typical way that Heim

1 does it?

2 A. We would prefer them going to a  
3 distributor but it's not absolutely necessary.

4 Q. Am I correct that if someone calls up Heim  
5 and inquires about the purchase of a press brake  
6 you would refer them first to the local  
7 distributor?

8 A. Yes. That's a good practice, yes.

9 Q. Because you want keep your distributors  
10 happy and out there selling your product?

11 A. Absolutely.

12 Q. And you don't want them to think you're  
13 approaching their territory, correct?

14 A. You don't want some competition.

15 Q. Correct. So it's to your advantage,  
16 Heim's advantage as well that they go through the  
17 local distributor?

18 A. Correct.

19 Q. You keep your Heim sales force  
20 distributors happy?

21 A. Correct.

22 Q. Now, at the time of the sale of the punch  
23 press -- I'm sorry, press brake.

24 A. No. I understand.

1 Q. I'm talking about press brakes. At the  
2 time of the sale of the press brake, am I correct  
3 that once it's mounted on the -- attached to the  
4 floor and energized, the ram will go up and down?

5 A. I believe that's correct. If everything  
6 was in place, the pneumatics and the electrics and  
7 properly hooked up, the normal -- that would be the  
8 normal case of sequence of operation, yes.

9 Q. Once you energize and -- energize the  
10 brake press and have it fixed to a -- stationary to  
11 the floor, then the foot control and if it has a  
12 two palm switch will operate it to go up and down,  
13 am I correct?

14 A. Correct.

15 MR. ROBINSON: I'm going to object to the form.  
16 You included the foot switch in that question. I  
17 have not heard who installs that foot switch and I  
18 don't want it to be implied. Maybe it's attached  
19 at the sale, maybe it's not. I'll ask if you're  
20 not going to.

21 MR. HARTMAN: That's fine. I will.

22 BY MR. HARTMAN:

23 Q. The foot pedal to be attached is an easy  
24 function that anyone can do if they follow the



1 instructions; is that correct?

2 MR. ROBINSON: I'll object to the form of that  
3 question.

4 THE WITNESS: Correct.

5 BY MR. HARTMAN:

6 Q. It's just basically you plug it in in the  
7 back, correct?

8 A. Simplicity, yes.

9 MR. ROBINSON: You plug it into the back, is  
10 that what you're saying?

11 THE WITNESS: It would be attached. It would  
12 be attached -- the foot switch is usually shipped  
13 separate so it's not lost in transit. And it does  
14 require it to be connected to the control panel.

15 MR. ROBINSON: He said plugged in as opposed to  
16 direct wire, there's a big distinction there and I  
17 don't want this to be confusing later on. He's  
18 acting like there's a receptacle that you plug it  
19 in.

20 THE WITNESS: I'd have to take a look at this  
21 particular press.

22 BY MR. HARTMAN:

23 Q. I think there is a receptacle.

24 A. I'd have to double-check.

1 Q. But it's something that you expect the end  
2 user to take the foot pedal, hook it up and it  
3 would be operational, am I correct?

4 A. That would be a requirement, yes.

5 Q. And there's instructions on how to do  
6 that, correct?

7 A. Correct.

8 Q. Now, when you talk about that there's --  
9 it's not functional in the sense that it requires  
10 additional work, you mean it won't begin forming  
11 parts because you need to put the dye in the  
12 machine to form the parts, am I correct?

13 A. Yes.

14 Q. And dyes come in all various sizes and  
15 shapes. So the machine is operational, it just  
16 won't mold the part the way you want it without the  
17 dye, am I correct?

18 A. Correct.

19 Q. And that's at the time it's shipped, it's  
20 basically operational but deenergized?

21 MR. ROBINSON: I'll object to the form of that.  
22 He's indicated that the foot switch would be  
23 shipped separately. It would not be operational,  
24 you may want to make it operational at the time,

1 but that isn't what the testimony has been. He's  
2 also indicated in his prior testimony that the end  
3 user would have to choose the appropriate point of  
4 operation safety device. You left that out of the  
5 equation.

6 BY MR. HARTMAN:

7 Q. When I say operational, I mean, the ram  
8 will go up and down as it's intended to do?

9 MR. ROBINSON: I appreciate that clarification,  
10 now we just have the foot switch issue?

11 BY MR. HARTMAN:

12 Q. When it's shipped once it's energized and  
13 you hook up the foot pedal, if you hit the foot  
14 pedal it goes up and down, am I correct?

15 A. Correct. In principal assuming everything  
16 else is properly attached and hooked up with the  
17 air and everything.

18 Q. As it's shipped and sold and once it's  
19 assembled with the foot pedal and energized, your  
20 press brake is operational, once it reaches --

21 A. It can go up and down. It has movement --

22 MR. ROBINSON: Hold on.

23 MR. HARTMAN: Can I please --

24 MR. ROBINSON: You're actually starting another

1 question. He's indicated assuming other things  
2 such as the air is hooked up, you've left that out  
3 of the equation. I want to make sure that the  
4 record is clear that there are other processes  
5 involved other than simply putting electricity to  
6 it, which is how I could see the term energize be  
7 read. And that there is, in fact, an air line,  
8 there is an electrical line, there is a foot  
9 switch, there is a point of operation safety  
10 device, all the things that he's already said.

11 BY MR. HARTMAN:

12 Q. Your press brakes will function without a  
13 point of operation protection device; is that  
14 correct?

15 A. It will go up and down, yes.

16 Q. They're designed to do that, am I correct?

17 A. That's correct.

18 Q. The only thing that the employer has to do  
19 to make it other than what we've already talked  
20 about, energize, affix and attach a foot pedal to  
21 make it begin molding parts or bending parts to put  
22 the dyes in, am I correct?

23 A. The dye would be a requirement to make any  
24 part, yes.

1 Q. So you put the dyes in and then it works?

2 MR. ROBINSON: I'll object to the form of the  
3 question.

4 BY MR. HARTMAN:

5 Q. Correct?

6 A. The spirit and intent, yes.

7 Q. There are many different types of  
8 distributor relationships that Heim has; is that  
9 correct?

10 A. We have many distributors, yes.

11 Q. And with regard to this particular  
12 distributor, HB Machinery, you have no information  
13 today as to what role it undertook other than to  
14 place the order with Heim in the purchase of the  
15 press brake 70-6?

16 MR. ROBINSON: I'll object, he's answered the  
17 question, he doesn't have personal knowledge, what  
18 he's learned is through the sales documents that  
19 you've attached as Exhibit 5.

20 BY MR. HARTMAN:

21 Q. Is there anything in the sales documents  
22 that tell you what role HB machinery had other than  
23 accepting the order for this machine?

24 A. No.

1 Q. And would I be correct that you don't know  
2 what type of ancillary equipment or services HB  
3 machinery provides with regard to the sale of press  
4 brakes?

5 A. Correct.

6 Q. And you don't know whether HB Machinery  
7 offered any ancillary services with regard to the  
8 sale of this particular press brake?

9 A. Other than the back gauge, no.

10 Q. What's the back gauge?

11 A. The back gauge is a device here that moves  
12 in one plane so you could take a sheet, put it in  
13 the press brake and it would have a stop so you can  
14 make your bend in a specific place.

15 Q. Okay. Okay. But their role was to follow  
16 up to see that the back gauge that you manufacture  
17 for the machine was shipped?

18 A. Correct.

19 Q. In fact, Afco Lycomie contacted Heim  
20 specifically to, according to the note, to find out  
21 what's going on with regard to the back gauge, am I  
22 correct?

23 A. Correct.

24 Q. You talk about -- would you expect that

1 when a product is protruding out from the machine  
2 that the operator has to hold that it would be in  
3 sheet metal form?

4 A. For press brake operation that would  
5 probably be a common assumption.

6 Q. What other types of forms are you aware of  
7 the metal -- do you have any idea?

8 A. It could already be preshaped.

9 Q. Okay. Am I correct your testimony was  
10 that there are no engineers employed by Heim  
11 that -- whose job duties it is is to evaluate point  
12 of operation protection for press brakes?

13 A. Specifically appointed, no.

14 Q. As an ancillary duty do they do that?

15 A. No.

16 Q. Is there anyone at Heim who has studied  
17 and evaluated the conclusion of a point of  
18 operation protection device on a press brake?

19 A. Not that I'm aware of.

20 Q. Is there sales literature that Heim  
21 distributes with regard to its press brakes?

22 A. Yes.

23 Q. In what form does that take?

24 A. There is a four-page leaflet.

1 Q. And how long has Heim had sales literature  
2 that they distribute with regard to its press  
3 brakes?

4 A. I presume since 1968 or since they  
5 started.

6 MR. ROBINSON: He's asking how long you know of  
7 that they've done that. We don't want you to guess  
8 or assume that then that opens up a whole ball of  
9 wax here.

10 THE WITNESS: I don't know the specific dates.

11 MR. HARTMAN: If you provide me with the sales  
12 literature, I'd appreciate that. If I have to send  
13 a letter --

14 MR. ROBINSON: What does that mean? You want  
15 me to provide you with sales literature for press  
16 brakes, I don't know that that means, Mr. Hartman.

17 MR. HARTMAN: Whatever sales literature you  
18 have.

19 MR. ROBINSON: From day one to 2005 you asked  
20 for that and the Court said that that's crazy.

21 MR. HARTMAN: No, they haven't said that.

22 MR. ROBINSON: You're going to have to put in a  
23 request for 40 something years of literature if  
24 that's the time frame that existed.



1 BY MR. HARTMAN:

2 Q. Let me ask you this, sir, is there  
3 different sales literature with regard to each of  
4 your press brakes or is there one pamphlet that  
5 covers all of your press brakes?

6 A. Existing today or from this period of  
7 time?

8 Q. No, today.

9 A. The product line has one leaflet today.

10 Q. Okay. And prior do you know if there were  
11 multiple leaflets or would you --

12 A. I don't know specifically.

13 Q. Would you think that it would be one  
14 leaflet to cover all the line of press brakes?

15 MR. ROBINSON: Object to the form of the  
16 question. He said to the best of his knowledge he  
17 doesn't know.

18 BY MR. HARTMAN:

19 Q. Does Heim place in magazines sales  
20 literature -- advertisements with regard to press  
21 brakes?

22 A. Ever or --

23 Q. Ever.

24 A. I've seen advertising, yes.

1 Q. Do they do TV or radio for press brakes?

2 A. No.

3 Q. Would it be mostly trade journals?

4 A. Most likely.

5 Q. Are there multiple advertisements you use  
6 or is it the same advertisement in all of the  
7 journals?

8 A. From the beginning of time?

9 Q. That you know of know now.

10 A. We haven't advertised lately.

11 Q. So you did it before, you don't do it now?

12 A. Right.

13 Q. You don't know the period of time that you  
14 did the advertising?

15 A. No.

16 Q. Would it be before '80, after '80,  
17 straddling '80?

18 A. Probably prior to '80.

19 MR. ROBINSON: Remember that you promised you'd  
20 be a short period of time.

21 BY MR. HARTMAN:

22 Q. Why are there different sizes of press  
23 brakes?

24 A. To meet a function of the capacity

1 required to bend certain materials and in different  
2 lengths.

3 MR. HARTMAN: I have no further questions.  
4 Thank you.

5 FURTHER EXAMINATION

6 BY MR. ROBINSON:

7 Q. Very briefly.

8 There is a two-page sheet, inspection  
9 sheet press brake in the sales file that we've  
10 marked as Exhibit 5, is this a Heim document?

11 A. Yes.

12 Q. Does this detail all of the different  
13 types of inspections that would be performed prior  
14 to the delivery of the press brake?

15 A. Yes.

16 Q. And who is Gemple Machinery Corp?

17 A. He's our agent -- excuse me, our  
18 distributor in Pittsburgh.

19 Q. And what type of services does Gemple  
20 provide?

21 A. He's a typical distributors, sales  
22 organization, sells machine tool equipment.

23 Q. And did you notice in the sales file that  
24 Gemple was the distributor for various parts,

1 including the parts and instructions manual that  
2 Corey had purchased?

3 A. Correct.

4 Q. Does Gemple sell presses and press brakes  
5 from various manufacturers?

6 A. I'm not sure.

7 Q. Does Gemple sell point of operation safety  
8 devices?

9 A. I'm not sure.

10 MR. ROBINSON: Those are all the additional  
11 follow-ups.

12 FURTHER EXAMINATION

13 BY MR. HARTMAN:

14 Q. One last question.

15 Earlier in your testimony Mr. Robinson  
16 indicated that there was -- when looking at this  
17 document No. 5 that there was a request for the  
18 foot pedal indicated?

19 A. Request for the foot pedal.

20 MR. ROBINSON: The assembly order is what he's  
21 referring to.

22 BY MR. HARTMAN:

23 Q. The assembly order.

24 Does this indicate it was a request or

1 that it was shipped with the foot pedal?

2 MR. ROBINSON: Object, it's been asked and  
3 answered.

4 THE WITNESS: It's shipped with the equipment.

5 BY MR. HARTMAN:

6 Q. This does not indicate that someone  
7 requested the foot pedal, does it?

8 A. It would imply that the order stated they  
9 wanted a foot pedal.

10 Q. Well, please, I'm not trying to be  
11 argumentative.

12 MR. ROBINSON: He's giving you his answer. He  
13 says this document says that it would have been  
14 requested. I don't know you don't like that  
15 answer, but that's what he's told you.

16 BY MR. HARTMAN:

17 Q. Well, if it was shipped standard with it,  
18 wouldn't this document also indicate that it was  
19 shipped with it?

20 A. Yes.

21 Q. So can you tell from looking at this  
22 document whether the yes by the foot pedal means  
23 that there was a request for it or if it was  
24 shipped standard with it?

1 A. Not from this document, no.

2 Q. So you don't know, am I correct?

3 A. Right.

4 MR. HARTMAN: Thank you. You have the right  
5 to --

6 MR. ROBINSON: We will read the transcript.

7 FURTHER DEPONENT SAITH NAUGHT.  
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1 STATE OF ILLINOIS )

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4 I, Kyla Elliott, a notary public within and for  
5 the County of Cook County and State of Illinois, do  
6 hereby certify that heretofore, to-wit, on the 27th  
7 day of July, 2005, personally appeared before me,  
8 at 33 North LaSalle Street, Chicago, Illinois,  
9 ANTHONY ROBERT MASE, JR., in a cause now pending  
10 and undetermined in the United States District  
11 Court, wherein TINA LINDQUIST is the Plaintiff, and  
12 HEIM CORPORATION is the Defendant.

13 I further certify that the said witness was  
14 first duly sworn to testify the truth, the whole  
15 truth and nothing but the truth in the cause  
16 aforesaid; that the testimony then given by said  
17 witness was reported stenographically by me in the  
18 presence of the said witness, and afterwards  
19 reduced to typewriting by Computer-Aided  
20 Transcription, and the foregoing is a true and  
21 correct transcript of the testimony so given by  
22 said witness as aforesaid.

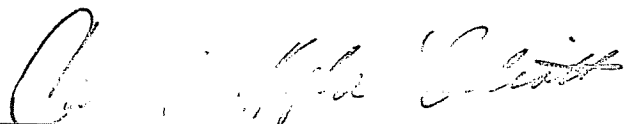
23 I further certify that the signature to the  
24 foregoing deposition was reserved by counsel for

1 the respective parties.

2 I further certify that the taking of this  
3 deposition was pursuant to Notice, and that there  
4 were present at the deposition the attorneys  
5 hereinbefore mentioned.

6 I further certify that I am not counsel for nor  
7 in any way related to the parties to this suit, nor  
8 am I in any way interested in the outcome thereof.

9 IN TESTIMONY WHEREOF: I have hereunto set my  
10 hand and affixed my notarial seal this 31 day  
11 of August, 2005.

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18 NOTARY PUBLIC, COOK COUNTY, ILLINOIS  
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